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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 95

PETER D. SCHWEITZER, LARRY F. GROTH, NAOMI D. PELLEY, RONALD R. PELLEY, ROGER J. MORRIS, HENRY BERGHOFF, ALBERT M. FLUCKEY, KRISANN K. FLUCKEY, ELDRIDGE H. RAVEN, MAUREEN MINEHART, and JUDITH BERRY,
Petitioners,

v.

CLERK FOR THE CITY OF PLYMOUTH and ELECTION COMMISSION FOR THE CITY OF PLYMOUTH,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

ANSWER TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

SHELDON M. MEIZLISH,
ABDEEN M. JABARA,
Attorneys for Petitioners and Co-operating Attorney of Michigan American Civil Liberties Union
726 Pallister Avenue
Detroit, Michigan 48202
875-3333

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1,349

PETER D. SCHWEITZER, LARRY F. GROTH, NAOMI D. PELLEY, RONALD R. PELLEY, ROGER J. MORRIS, HENRY BERGHOFF, ALBERT M. FLUCKEY, KRISANN K. FLUCKEY, ELDRIDGE H. RAVEN, MAUREEN MINEHART, and JUDITH BERRY,

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I. Petitioners' Cause is not Mooted by the Resignation of Peter Schweitzer From the City Commission.

Although Mr. Schweitzer has resigned from the City Commission, the arbitrary exclusion of non-property owners from eligibility for candidacy continues to deprive

qualified potential candidates of their right to run for this office and future voters of their right to vote for candidates who lack this qualification. The interests of Petitioners in this controvesy as voters have in no way been affected by the resignation of Mr. Schweitzer. Further the Court has recognized that where an impermissible burden has been placed on elections and will be placed on all future elections, a continuing controversy is presented which requires resolution. *Moore v. Ogilvie,* 89 S.Ct. 1493 (1969).

II. The Controversy is not Mooted by the Decision to Submit the Question to the Voters.

Respondents have also suggested that the fact that the charter provision in question will be submitted to the voters on September 8, 1969 for their affirmation or rejection renders the controversy moot. Since the outcome of the election may be approval of the charter provision in question, it is difficult to understand how merely placing the issue on the ballot affects this controversy. Indeed, since there is nothing in the record of this case suggesting mootness as the result of the repealing of the charter provision, reference to *possible* mootness *at some future date* in Respondent's reply brief is improperly made.

Further, the outcome of a municipal election cannot be determinative of the Petitioners' constitutional rights. Should the charter provision be upheld in the election, it will continue to deprive Petitioners of their constitutional rights as articulated in *Kramer v. Union Free School District,* 89 S.Ct. 1886 (1969) and *Cipriano v. City of Houma,* 89 S.Ct. 1897 (1969). It has been held impermissible to submit an issue to the electorate when one outcome of the election may be a denial of constitutional rights. Such a course violates the Supremacy Clause and involves the

state in the denial of equal protection of the laws in violation of the Fourteenth Amendment. *Otey v. Common Council, of the City of Milwaukee,* 281 F.Supp. 264 (E.D. Wisc. 1968); *Holmes v. Leadbetter,* 294 F.Supp. 991 (E.D. Mich. 1968); *Ranjel v. City of Lansing,* 293 F.Supp. 301 (W.D. Mich. 1969); *Ellis v. Mayor and City Council of Baltimore,* 234 F.Supp. 945 (D. Md. 1964), aff'd 352 F.2d 123 (4th Cir. 1965). The constitutional rights of Petitioners are not dependent on the will of the electorate.

The right which Petitioners and others have been denied as voters and potential candidates is of the first importance. *Kramer v. Union Free School District,* 89 S.Ct. 1886 (1969). *Cipriano v. City of Houma,* 89 S.Ct. 1897 (1969). If the decision below is allowed to stand, these Petitioners, other residents of the city of Plymouth and residents of more than fifty other municipalities* in the State of Michigan will continue to suffer the injustice inflicted by this arbitrary eligibility requirement.

Respectfully submitted,

SHELDON M. MEIZLISH,
ABDEEN M. JABARA,
Attorneys for Petitioners and Cooperating Attorney of Michigan American Civil Liberties Union,
726 Pallister,
Detroit, Michigan 48202,
875-3333.

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* Other municipalities in the State of Michigan which require that candidates for the governing body of the city own property in the city include, but are not limited to, the following:

City	*Residence Requirement*	*Charter Reference*
Allegan	1 year	Ch. III, Sec. 21
Alpena	3 years	Sec. 3.2
Belleville	no requirement	Ch. II, Sec. 1
Berkley	2 years	Sec. 3.2

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City	*Residence Requirement*	*Charter Reference*
Bingham Farms	no requirement	Ch. III, Sec. 3
Bloomfield Hills	2 years	Ch. III, Sec. 3
Caseville[1]	1 year	Sec. 5.1
Charlotte	2 years	Sec. 3.2
Chatham	2 years	Sec. 5.1
Clawson	2 years	Sec. 4.01
Davison	1 year	Ch. III, Sec. 21
DeWitt	6 months	Sec. 3.1
Durand	2 years	Sec. 5.1
Eaton Rapids[2]	2 years	Sec. 3.2
Essexville	2 years	Art. VI, Sec. 2
Gaylord	2 years	Sec. 4.3
Gibraltar	2 years	Sec. 5.1
Goodrich	2 years	Sec. 5.1
Greenville	2 years	Sec. 5.1 (also Sec. 17.12, g
Hart	1 year	Sec. 3.2
Hancock	3 years	Sec. 3.11
Howell	2 years	Sec. 4.5
Inkster	2 years	Sec. 5.1
Keego Harbor[3]	1 year	Sec. 5.1
Kingsford	1 year	Sec. 3.20

[1] ". . . or a member of an association owning assessed property."

[2] real *or* personal property which is assessed.

[3] ". . . or exempt from taxes by operation of law."

Compiled, February, 1967, Charter File
Michigan Municipal League
Ann Arbor